

REMARKS

The paper is in response to the Office Action mailed March 17, 2009 ("the Office Action"). The foregoing amendment cancels claims 9 and 19-30 and amends claims 1, 2, 3, and 15. Claims 1-8 and 10-18 are now pending in view of the amendments. Applicants respectfully request reconsideration of the application in view of the above amendments to the claims and the following remarks. For Examiner's convenience and reference, Applicants present remarks in the order that the Office Action raises the corresponding issues.

In connection with the prosecution of this case and any related cases, Applicants have, and/or may, discuss various aspects of the disclosure of the cited references as those references are then understood by the Applicants. Because such discussion could reflect an incomplete or incorrect understanding of one or more of the references, the position of the Applicants with respect to a reference is not necessarily fixed or irrevocable. Applicants thus hereby reserve the right, both during and after prosecution of this case, to modify the views expressed with regard to any reference.

Please note that Applicants do not intend the following remarks to be an exhaustive enumeration of the distinctions between any cited references and the claims. Rather, Applicants present the distinctions below solely by way of example to illustrate some of the differences between the claims and the cited references. Finally, Applicants request that Examiner carefully review any references discussed below to ensure that Applicants' understanding and discussion of any reference is consistent with Examiner's understanding.

Unless otherwise explicitly stated, the term "Applicants" is used herein generically and may refer to a single inventor, a set of inventors, an appropriate assignee, or any other entity or person with authority to prosecute this application.

Objection to Drawings

The Office Action objects to the drawings for failing to show the elements of claim 23. Claim 23 has been canceled, therefore the objection is moot.

Rejection Under 35 U.S.C. §101

Claims 23-29 are rejected under 35 U.S.C. §101 because the Office Action alleges that the claimed invention is directed to non-statutory subject matter. Claims 23-29 have been canceled. Therefore, the rejection of claims 23-29 is moot.

Rejection under 35 U.S.C §103(a)

The Office action rejects claims 1-8, 13, 14, 16-22, and 30 under 35 U.S.C §103(a) over *Pruthi et al.* (U.S. Patent Publication No. 2002/0105911) in view of *Leftwich* (U.S. Patent No. 6,356,256) and further in view of *Hamilton* (U.S. Patent Publication No. 2004/0064293) and rejects claims 23-29 under 35 U.S.C §103(a) over *Pruthi et al.* in view of *Leftwich* in view of *Hamilton et al.* and in further view of *Fingerhut et al.* (U.S. Patent No. 7,039,577).

Because claims 19-30 have been canceled the rejections of those claims are moot.

Under 35 U.S.C §103(a), “[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” According to MPEP §2142, “[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” Finally, MPEP 2141.III notes that:

“The key to supporting any rejection under 35 U.S.C. 103 is the *clear articulation of the reason(s) why the claimed invention would have been obvious*. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” KSR, 550 U.S. at ___, 82 USPQ2d at 1396.” (emphasis added)

Claim 1 has been amended to include the element previously set forth in claim 9 without the intervening claims. The Applicant respectfully asserts that the references of record do not teach or suggest the elements of claim 1. For example, none of the references of record teach or

suggest, "storing a histogram, including the data points, at the user computer, the histogram further including a listing and description of downloaded captured data files stored on the user computer; and using the listing and description of downloaded captured data files to code portions of a capture histogram and a zoom histogram with a first indicator representing sections stored at the user computer." As required by claim 1. Therefore, the Applicant respectfully requests that the rejections of claim 1 be withdrawn.

Allowable Subject Matter

The Office Action objects to claims 9-12 and 15 as being dependent on a rejected base claim, but indicates that claims 9-12 and 15 would be allowable if rewritten in independent form to include all of the elements of the base claim and any intervening claims. Claim 15 has been rewritten in independent format incorporating claim 1 and 14 (the base claim and intervening claim). Therefore, the Applicant respectfully requests that the rejection of claim 15 be withdrawn.

As previously discussed, the element of claim 9 has been incorporated into claim 1 without the intervening claims. Claim 1 is believed to be allowable as was claim 9. Claims 10-12 are believed also be still be allowable and the Applicants hereby expressly reserve the right to present similar or identical claims to preamendment versions of claims 9-12 in this or a related application at a different time.

Charge Authorization

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefor and charge any additional fees that may be required to Deposit Account No. 23-3178.

CONCLUSION

In view of the foregoing, Applicants submit that the pending claims are allowable. In the event that Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview or overcome by an Examiner's Amendment, Examiner is requested to contact the undersigned attorney.

Dated this 4th day of June, 2009.

Respectfully submitted,

/David A. Jones/ Reg. 50,004

DAVID A. JONES
Registration No. 50,004
Attorney for Applicant
Customer No. 22913
Telephone No. (801) 533-9800

DAJ:jbh
2403812_1